

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK**

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**IN RE: Marguerite A. Vanden Wyngaard**

**Hearing Date: February 14, 2019**

**Hearing Time: 11:15 a.m.**

**Location: Albany**

**SSN: XXX-XX-8787**

**Debtor.**

**Case No. 17-11965**

**Chapter 13**

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**TRUSTEE'S NOTICE OF MOTION AND MOTION TO DISMISS WITH NOTICE OF AWARD  
OF LEGAL FEES TO DEBTOR'S ATTORNEY IF CASE DISMISSED BEFORE PLAN  
CONFIRMATION**

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**NOTICE OF TRUSTEE'S MOTION:**

**PLEASE TAKE NOTICE**, that the undersigned Trustee will move this Court for an order dismissing this Chapter 13 case. Said Motion will be heard at the United States Bankruptcy Court, James T. Foley Courthouse, 445 Broadway, Suite 306, Albany, NY 12207 on February 14, 2019 at 11:15 a.m.

**PLEASE TAKE FURTHER NOTICE**, that if this case is dismissed after confirmation of a Chapter 13 plan, the Trustee seeks approval to distribute all funds received by the Trustee before dismissal (less trustee fees) to pay allowed claims under the terms of the confirmed plan.

**PLEASE TAKE FURTHER NOTICE**, that if this case is dismissed before confirmation of a Chapter 13 plan, the Trustee seeks an Order (1) approving and directing payment of a fee in the sum of **\$2,000** for general legal services rendered by Debtors' Attorney in this Chapter 13 case(the "Case Approved Fee") and (2) directing payment of any and all previously

court-approved fees awarded to Debtors' Attorney for legal services rendered in connection with this Court's Loss Mitigation program (the "Loss Mit Fees"). Funds on hand with the Trustee will first be disbursed to pay the Loss Mit Fees, with the balance disbursed to pay the Case Approved Fee.

If Debtors' Attorney has received less than the Loss Mit Fees plus \$2,000 before dismissal, any portion not paid, may be paid from funds on hand with the Chapter 13 Trustee. If the Loss Mit Fees plus the full \$2,000 are not satisfied after the Trustee's disbursement, any remaining balance may be collected from the Debtor(s). If Debtors' Attorney has received more than the Loss Mit Fees plus \$2,000 prior to dismissal, Debtors' Attorney shall be required, within ten (10) days after entry of the Order Dismissing Case to either (1) refund all amounts received in excess of the Loss Mit Fees plus \$2,000 to the Debtor(s) and file proof of same with the Court, or (2) file and serve an Application for Compensation for approval of all fees received and sought. Further, in these instances, the Court may also direct that the balance of the funds received by the Trustee before dismissal (after payment of applicable trustee fees and any Loss Mit Fees and Case Approved Fee as set forth above) be returned to the Debtor(s).

**TRUSTEE'S MOTION:** The undersigned Trustee moves pursuant to §1307(c) of the U.S. Bankruptcy Code (11 U.S.C. §1307) for an Order dismissing this case for the following cause:

- **Default in plan payment under the terms of the confirmed or proposed plan**  
(Information regarding payments received is available at: [www.13datacenter.com](http://www.13datacenter.com)).

**CASE INFORMATION:**

Monthly Plan payment: \$529.01

Plan term: 60

Amount of default through December: \$1,140.97

Last plan payment received prior to January 04, 2019: \$1,504.00, 08/31/2018

The Trustee also moves pursuant to 11 USC §331 to award and direct payment of the Case Approved Fee and to direct payment of Loss Mit Fees to Debtors' Attorney on such terms and conditions as set forth in the Notice above, if the case is dismissed before confirmation of a Chapter 13 plan.

IF YOU INTEND TO OPPOSE THIS MOTION, WRITTEN OPPOSITION MUST BE FILED WITH THE CLERK OF THE COURT AND SERVED ON THE CHAPTER 13 TRUSTEE AT LEAST SEVEN (7) DAYS PRIOR TO THE RETURN DATE. IF YOU DO NOT FILE AND SERVE WRITTEN OPPOSITION, NO HEARING WILL BE HELD ON THE RETURN DATE AND THE COURT MAY GRANT THE MOTION AS UNOPPOSED.

Dated: January 04, 2019

/s/ Andrea E. Celli

Andrea E. Celli  
Chapter 13 Standing Trustee  
7 Southwoods Blvd.  
Albany, NY 12211

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

IN RE: Marguerite A. Vanden Wyngaard

**AFFIDAVIT OF SERVICE**

Case No.: 17-11965

Debtor

KIM WAXMAN, BEING DULY SWORN, DEPOSES AND SAYS: THAT SHE IS OVER THE AGE OF 18 YEARS; THAT SHE SERVED A COPY OF **TRUSTEE'S NOTICE OF MOTION AND MOTION TO DISMISS WITH NOTICE OF AWARD OF LEGAL FEES TO DEBTOR'S ATTORNEY IF CASE DISMISSED BEFORE PLAN CONFIRMATION** DATED JANUARY 04, 2019 ON THE FOLLOWING MANNERS: ON JANUARY 04, 2019.

**VIA ELECTRONIC FILING:**

Office of the United States Trustee  
74 Chapel Street  
Albany, NY 12207

JONATHAN D. WARNER  
Warner & Warner, PLLC  
6 AUTOMATION LANE  
SUITE 109  
ALBANY, NY 12205

**VIA REGULAR U.S. MAIL**

Marguerite A. Vanden Wyngaard  
14 Norwood Ave  
Albany, NY 12208-2815

BY DEPOSTING A TRUE AND CORRECT COPY OF THE SAME PROPERLY ENCLOSED IN A POST-PAID WRAPPER IN THE OFFICIAL DEPOSITORY MAINTAINED AT 7 SOUTHWOODS PLAZA, ALBANY, NEW YORK DIRECTED TO SAID PERSON(S), AT SAID ADDRESSES.

/s/ KIM WAXMAN

KIM WAXMAN

Sworn before me this  
4th day of January, 2019

/s/ Bonnie S. Baker

Reg. # 02BA5073612

Notary Public - State of NY

Qualified in Albany County

My Commission Expires 02/24/2019